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Final Regulation Agency Background Document

Agency name	Board (Department) of Juvenile Justice
Virginia Administrative Code (VAC) citation	6 VAC 35-10
Regulation title	Public Participation Guidelines
Action title	Update the regulation to reflect technological and statutory changes since the original regulation was adopted in 1991.
Document preparation date	August 23, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The amendments reflect changes made in the Code of Virginia since the original regulation was adopted in 1991, particularly the recodification of Title 9 and Title 2.1 in 2001, which resulted, for example, in § 9-6.14:7.1 being replaced by § 2.2-4007.

Also, since the current regulation was adopted in 1991, there have been a number of technological innovations, such as e-mail, fax and internet-based applications, whose widespread acceptance has made communication on regulatory action both faster and easier. Revisions to the regulation are intended to make those innovations a routine part of the regulatory process. Finally, amendments provide guidance for maintaining, updating and purging lists of interested parties.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

The Board of Juvenile Justice adopted the final regulation, “Public Participation Guidelines,” at its February 2006 meeting.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

A. The Administrative Process Act (Chapter 40 of Title 2.2 of the Code of Virginia) sets out the procedures for promulgating regulations. Specifically, § 2.2-4007, paragraph D, directs agencies of the Commonwealth to develop, adopt and use public participation guidelines for soliciting the input of interested parties in the formation and development of regulations.

B. Code of Virginia § 66-3 requires that, when the Department acquires real property for the purpose of operating a juvenile correctional facility or other residential or administrative facility, the Department shall comply with **standards set by the Board to ensure adequate public notice and local hearing**.

Section 66-10 of the Code of Virginia empowers the Board of Juvenile Justice to make, adopt and promulgate rules and regulations.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

These *Public Participation Guidelines* provide a variety of means for interested parties and the general public to be made aware of and to offer their comments on regulations being considered, drafted or revised by the Board of Juvenile Justice. Many of the proposed revisions are intended to permit and encourage the use of “new” technologies in communicating about regulations.

Also, a new PART of this regulation is added to address the statutory requirement of Code of Virginia § 66-3 that the Board establish standards “to ensure adequate public notice and a local hearing” when the Department acquires real property for the purpose of establishing a juvenile correctional facility.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Several sections of the regulation (20, 30, 60, and 70) include updated references to the Code of Virginia.

References to "operating units" (Sections 10, 80, 90, and 100) have been deleted, allowing the Department flexibility to centralize or decentralize the internal processes for facilitating the steps of the Administrative Process Act as circumstances may warrant.

Guidance is provided for identifying and soliciting input from interested parties (Sections 80, 90, 100, 105, and 110).

New provisions allow the public to petition for rulemaking (Section 120), provide for notice and public hearing when the Department acquires real property for certain purposes (Sections 130, 140, and 150).

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

1. The primary advantage to the public is increased facility to participate in the regulatory process through e-mail, fax and internet applications, etc.
2. The primary advantage to the Commonwealth is the ability to communicate contemplated regulatory changes more efficiently and economically via e-mail, fax and internet applications.

There are no known disadvantages to the public or the Commonwealth.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
80	Paragraphs A through D described procedures for maintaining lists of interested parties.	New paragraphs E through G specify requirements for soliciting comments from juveniles and their families, staff members, and citizen liaison groups.	In response to public comment.
105	Prescribed documents to be mailed to those on “interested parties” mailing lists, at each stage of proceedings.	Adds requirement to send agency’s summary of public comment and the agency’s response to each comment to all who offered comments at least five days before final adoption of regulation.	In accordance with Virginia Code § 2.2-4012.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency Response
Eileen Gray - comment made at Board meeting, September 14, 2005.	Provide a means for soliciting the views of juveniles when regulations are developed.	Note that 6VAC35-10-50. B. permits the Board and the Department to provide additional opportunity for public comment in process of drafting, revising or repealing regulations. Also, in response to other public comments cited below, the regulation will be amended specifically to solicit comments from juveniles, their families, and program staff.

<p>Parent of a ward (name withheld).</p>	<p>Limiting the scope of the regulation to rulemaking is unfortunate and wrong. My comments are oriented to increasing public participation. DJJ-involved juveniles, their families and their advocates are “the public”. The more the public is involved with the kids, the better.</p> <p>It is critical for DJJ to hear as many voices as possible. Please consider my comments on how to improve public participation: actively solicit comments from family members and DJJ staff, who are also good voices and advocates for wards. If a few comments are not precisely within the subject of the regulation, please refer the comments to the appropriate person in DJJ for separate action. Thank you.</p>	<p>While appreciating the goal of enhancing public participation more broadly, this regulation is specifically required by COV § 2.2-4007, paragraph D, which directs agencies of the Commonwealth to develop, adopt and use public participation guidelines for soliciting the input of interested parties in the formation and development of regulations. 6VAC35-10-80 is amended to incorporate this suggestion to solicit comments from wards and their families.</p> <p>Comments that may have broader application are being referred to appropriate personnel in the Department for further consideration as noted in responses to specific comments offered below.</p>
	<p>A. Expand the regulation and any subsequent guidelines to increase public participation at large, not just on rulemaking. The reg is startlingly silent on outreach responsibilities to actively educate and inform the public and to ask for feedback from people who are most directly involved with DJJ.</p>	<p>Virginia Code § 66-10 (7) gives the Board of Juvenile Justice the power and the duty “To ensure the development of programs to educate citizens and elicit public support for the activities of the Department.” This will be called to the Board’s attention.</p>
	<p>1) Set a goal to get feedback from more and more families each year until there is feedback from 80%. This would encourage participation, which benefits both wards and DJJ.</p>	<p>6VAC35-10-80 is amended to incorporate this suggestion.</p> <p>The regulation will require efforts to solicit comments from family members but will not set percentage goals.</p>
	<p>B. Expand the Ombudsman and Inspector General (IG) goals and responsibilities. The Ombudsman and IG must be independent to do their job.</p>	<p>The suggestion has been referred to the Ombudsman and the IG.</p>

	<p>Also, many families do not know what the IG and the Ombudsman do.</p> <p>1) DJJ and the Ombudsman’s office must improve and expand their outreach.</p>	
	<p>B. 2) All families should have ready access to the Ombudsman and should receive a plain English description of what an Ombudsman does, how to contact her, and the number of contacts the Ombudsman receives.</p>	<p>The suggestion has been referred to the Ombudsman. Materials are being prepared for distribution when wards are oriented to a juvenile correctional center.</p>
	<p>B. 3) Families should be able to call an 800 number, at least for the initial reporting of a concern.</p>	<p>The suggestion has been referred to the Ombudsman; an 800 is being investigated.</p>
	<p>B. 4) To allay fear of possible repercussions, the Ombudsman and IG should have a system to hear the most sensitive concerns without attribution. The public should know how the inquiries to the Ombudsman and IG are handled to protect confidentiality.</p>	<p>The suggestion has been referred to the Ombudsman and the IG. Most inquiries are already handled confidentially.</p>
	<p>B. 5) The Ombudsman and IG should publish reports quarterly on the number and types of contacts, problems in the facilities, and actions taken.</p>	<p>The suggestion has been referred to the Ombudsman and the IG.</p>
	<p>B. 6) The Ombudsman and IG should set goals to increase the number of contacts with the public and most especially, with families.</p>	<p>The suggestion has been referred to the Ombudsman and the IG.</p>
	<p>C. Identify existing channels of communication in the reg, state the additional channels under development, find ways for different groups to communicate with each other, and state a goal to create more opportunities for participation.</p>	<p>The suggestion has been referred to the Ombudsman and the IG.</p>
	<p>C. 1) Develop opportunities for</p>	<p>The comment has been referred to the</p>

	<p>families to get support from each other if they wish. There is no easy way for families to find each other because of privacy concerns. ... Families visiting their kids are best suited to help each other. Visitation is a good opportunity for families to meet each other, but in some facilities, interaction among visiting families is overtly discouraged. Families who visit are the ones who are the most involved with their child (and financially able to make the sometimes long distance trek to their child's facility). Brainstorm with families who visit what their ideas are for mutual support, or how to help a family who can't visit due to travel problems, etc.</p>	<p>Division of Institutional Services for review and consideration.</p>
	<p>C. 2) Increase family interest and public participation by providing more information about DJJ to them. Makes flyers available at visitation with information about the facility's programs. (The writer cites a number of recent examples). These and other successes could be written up as one page handouts available at visitation or given to the kids to enclose in their letters home.</p>	<p>The suggestion has been referred to the Public Information Office of the Department, and it will review strategies to include information concerning ward achievements in the department's on-line newsletter. Additionally, a survey of superintendents will be conducted to determine best methods of communicating ward activities at DJJ facilities, either at the time of visitation or for other opportunities of ward communication to parent or guardians.</p>
	<p>Raise the free stamp limit for kids who want to write and who might include the public information.</p>	<p>The suggestion has been referred to the Division of Institutional Services for review and consideration.</p>
	<p>D. Make families partners in the reentry process. Almost all of the DJJ kids will be coming home. Reentry is a critical time. Family members and other caregivers need to be part of the reentry planning process. They need to be invited to the</p>	<p>The Department is currently reviewing transition and reentry initiatives. Additionally the agency has been participating with the Departments of Mental Health and Correctional Education in Mental Health Transition Planning Regulations and School Enrollment Regulations.</p>

	<p>planning table or to phone participation and should receive a reentry packet of helpful information, including who to call when they are not receiving the services they are supposed to.</p>	
	<p>E. Improve family access to wards. Research indicates that more family involvement means better re-entry is for the juvenile. This translates to lower recidivism and serves the public safety at large. Encourage as much interaction with DJJ and with the juvenile as possible.</p>	<p>This comment has been referred to the Division of Institutions for review and consideration.</p>
	<p>E. 1) It costs families several dollars <i>per minute</i> to speak to their children in facilities. Please do everything possible to ... get affordable telephone options for DJJ kids, per the new Virginia law.</p>	<p>This past year the Department of Juvenile Justice participated with the Department of Correction (DOC) in reviewing proposals for telephone services to wards/inmates. A new contract was recently awarded by DOC to MCI for these services. Effective 2/1/06 new rates will be instituted for telephone services as well as a prepay option. The Department has been advised by MCI that most participants will experience a decrease in the cost of services.</p>
	<p>E. 2) Offer more visiting options, as in other states-- different hours, overnight programs as release approaches (both ward furloughs and overnight stays at the facilities for family members); better communication between staff and families.</p>	<p>The comment has been referred to the Division of Institutional Services for review and consideration.</p>
	<p>E. 3) Also, DJJ needs to expand access to important people (not just relatives) who have played a positive role in the child's life.</p>	<p>The current Division of Institution procedure allows for the following individuals to visit a ward: parent(s), guardians, step-parents, maternal and paternal grandparents, spouse, children, siblings and step-siblings, and any adult (age eighteen and over) family members who have been approved by the administration of the juvenile correctional</p>

		facility. Additionally there is already a process to allow Special visits to be granted if recommended by the ward's Counselor and the local supervising agency and approved by the Superintendent or his/her designee.
	E. 4) Encourage more families to visit their kids; make it more cheerful, convenient, affordable. Security frisks or metal detectors may be necessary, but facility practices should be checked anonymously to insure that inadvertently demeaning procedures or guard attitudes are not discouraging visitation.	The comment has been referred to the Division of Institutional Services for review and consideration.
	E. 5) Bringing home cooked food, or food from fast food places to eat with the juvenile at visitation, particularly when the family is traveling a long distance, should be allowed at all facilities.	The comment as been referred to the Division of Institutional Services for review and consideration.
	E. 6) To encourage family participation, expand the number of days and hours for visitation... to 3 visitation periods per week. This would especially help families who work weekends.	The comment has been referred to the Division of Institutional Services for review and consideration.
	E. 7) Keep the child closer to home to support more frequent visitation.	Wards are committed to the Department in order to receive designated treatment services as well as for public safety. Wards are placed at facilities within the Division of Institutions based upon a number of factors to include but not be limited to: security requirements, age, sex, medical, psychological and treatment needs, committing offense, home, transitional needs, etc. The Department strives to offer wards opportunities for family contact and interaction where possible and home area is considered in facility placements; however, treatment service needs and security requirements remain the overriding factors in all placements. The Department's Community Placement

		Program does, in fact, place a number of wards in detention facilities closer to their home communities during the final stage of direct care to facilitate visitation and re-entry.
	E. 8) So that more kids receive visitors, actively recruit service groups, colleges and others to develop visitor programs to the facility. Big Brother/Big Sister groups could be especially helpful, as they have been in Alaska.	The comment has been referred to the Division of Institutional Services for review and consideration.
	F. Make sure there is a quality control on the technical operations of the new public participation regulations when they are adopted.	The regulatory coordinator is developing procedures to ensure that all steps required by the public participation guidelines are followed.
	F. 1) First check the “interested parties” list for contacts. Is it as inclusive of people and juvenile justice advocates as it can be? Are they being notified of open comment period on regulations? Is it up-to-date?	The regulatory coordinator is working with the line divisions of the Department to ensure that procedures are in place to implement these goals.
	F. 2) The protocol for quality control should include setting up tests for outbound-inbound communication and for receiving public comments sent via the links at the DJJ and Town Hall websites and for making sure that postings for public review (such as Board minutes) can be viewed by from the inter-net, not just the DJJ intra-net.	DJJ’s web site and intra-net are in the process of being updated. These suggestions should be accommodated as a result of those updates.
	F. 3) From personal experience, I know there are communication problems. For example, as someone who has submitted comments on a recent DJJ regulation, I am, by definition, an “interested person” who should have received notification of these proposed regs from DJJ. I did not.	As noted above at the general comments on F., the regulatory coordinator is developing procedures to ensure that all steps required by the public participation guidelines are followed.

	F. 4) Also, I have tried to email DJJ Central and I know at least two people from DJJ Central tried to email me, but unfortunately the emails did not go through.	This technical problem has been referred to the DJJ help desk.
	G. Provide a better packet of information and useful contacts when a child is detained, committed, or released. Help is needed to point families in the right direction for information. Intake officers, court service unit staff and facilities contacts should provide information on programs. There should be a process to update this periodically. The information should also be given directly to the older wards who may be 18+ so they can independently pursue action if so desired.	The comment has been referred to the Division of Institutional Services and to the Division of Community Programs. Separate regulations currently being developed will provide case management and referral assistance to families of wards (and to wards over the age of 18) who are the subject of a mental health transition service plan.
	H. There should be efforts to solicit comments from the DJJ staff in the facilities too. Anyone with experience and thoughtful suggestions should be heard.	6VAC35-10-80 is amended to incorporate this suggestion.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10		Definitions.	Terms are deleted that are not used in the revised regulation. The agency name is updated from “Youth

			and Family Services” to “Juvenile Justice.”
20		Cites legal authority for the regulation.	The references are updated to reflect the recodification of the Administrative Process Act in 2001. (In particular, § 9-6.14:7.1 was replaced by Section 2.2-4007.) Also, reference to Virginia Code § 66-3 is added. That section requires that, when the Department acquires real property for the purpose of operating a juvenile correctional facility, the Department shall comply with standards set by the Board to ensure adequate public notice and local hearing.
30		Purpose.	Amended to address both the development of regulations and their amendment. Also, the public notice requirements of COV § 66-3 are referenced in this section.
40		Administration.	Clarifies that the Department, through designated staff, acts as agent of the Board in the development and review of regulations as prescribed by the Administrative Process Act and Executive Orders of the Governor.
50		Application of regulations.	Amended to make it clear that these public participation guidelines apply to all regulations adopted, amended or repealed by the Board of Juvenile Justice, unless exempted or excluded by law. New paragraph B makes clear that the Board may provide additional opportunity, beyond the requirements of these guidelines, for public comment in process of drafting, revising or repealing regulations.
60		Effective date.	This section is deleted because the effective date of the regulation is no longer a part of the regulation itself, but is noted in the Virginia Register of Regulations when the final regulation is published.
70		Application of the Administrative Process Act.	This section is amended so that statutory references reflect recodification. Also, the section includes reference to applicable Executive Orders of the Governor.

80		Identification of interested parties.	<p>Amended to require the Department (not its individual operating units) to maintain lists of interested parties. New paragraphs offer guidance on adding parties to the lists and purging the lists of inactive names.</p> <p>Three paragraphs are added in response to public comment, specifying that efforts must be made and documented to invite comment from juveniles and families; staff in regulated programs; and liaison committees where they exist.</p>
90		Notification of interested parties.	<p>This section is amended to require the Department (not its individual operating units) to notify interested parties. Notice may be by U.S. mail, fax, or e-mail. A new paragraph requires use of both the Department's web page and the Regulatory Town Hall web page maintained by the Department of Planning and Budget.</p>
100		Solicitation of input from interested parties.	<p>A new paragraph gives interested parties an opportunity, early in the regulatory process, to submit data, views, and arguments in person, by regular mail, e-mail, or facsimile. Amendments clarify that advisory panels shall be representative of those who have registered an interest in the subject of the regulation or who have an expertise in a specific regulatory matter. The regulation no longer requires that advisory panels consist of at least three persons or meet at least twice.</p>
	105	Documents to be sent to persons or entities on the mailing list.	<p>This new section details the categories of information that must be sent to interested parties.</p>
110		Administrative Process Act procedures.	<p>Updates statutory references. Also declares the general policy of the Board to conduct a public hearing as part of the public comment period for all regulations, and whenever practicable to schedule at least one such hearing in conjunction with a meeting of the Board so that board members may hear first hand from persons who have an interest in</p>

			the regulation.
	120	Petition for rulemaking.	This new section, consistent with Code of Virginia § 2.2-4007, permits any person to petition the Board to develop a new regulation or to revise an existing regulation.
	130	Notice to Local Governing Authority.	When the Department acquires real property for the purpose of operating a juvenile correctional center or other residential or administrative facility, it shall provide notice to the governing body of the locality in which the property is located. The Department may give such notice as soon as it has reason to believe it may acquire a specific property, but must give notice at least 30 days prior to entering into a contract to purchase or accepting a deed or other instrument of conveyance for the property.
	140	Public hearing.	The Department shall conduct a public hearing within 30 days from the date it notified the locality. If, however, the locality elects to conduct its own hearing within this same 30 days, the Department may dispense with its hearing.
	150	Comments made at public hearing.	Department staff shall attend the local hearing and summarize the public comments made and any responses offered by the Department. A summary of the comments and responses shall be included in any report to the General Assembly, the Governor, or any executive branch agency that has a role in reviewing and approving the development of the juvenile correctional facility on the property which was the subject of the local hearing.

Enter any other statement here

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

The regulation ensures that interested parties have an opportunity to be involved in reviewing and commenting on regulations being considered by the Board of Juvenile Justice. To the extent that parents of juveniles in the juvenile justice system, or at risk of entering that system, choose to participate in the comment process, this regulation enhances parents' opportunity to have a say in how Virginia will treat its delinquent and at-risk youth population. However, the substance of the regulation has no direct impact, either positive or negative, on Virginia's families and their stability.

New paragraph E in Section 80 requires the Department to make and document efforts to invite comment from juveniles and their families when a regulation governs programs or services that directly affect juveniles or their families.